appeal being valued at Rs. 2,500 only). If the defendants do not pay within three months from this date the amount that will be thus found due, the mortgaged properties shall be sold for realisation of the same with interest thereon at 6 per cent. per annum from the expiry of the said period of three months till realisation.

KHAJA MOHAMAD NOOR, J.—I entirely agree.

Appeal allowed.

Decree modified.

S. A. K.

APPELLATE CIVIL.

Before Fazl Ali and Varma, JJ.

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v.

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December, 1, 23.

Bihar Tenancy Act, 1885 (*Act VIII of* 1885), *Schedule III, article* 2(*b*)(*ii*), *whether retrospective—suit for produce rent instituted after the Act came into force—accrual of cause of action before passing of the Act—suit, whether governed by shorter period of limitation.*

A suit for produce rent instituted after the Bihar Tenancy Act, 1885, came into force is governed by the period of limitation provided by that Act, although the cause of action for the claim accrued before the passing of the new Act.

Shaikh Reyasat v. *Gopi Nath Missir*(1), followed.

A statute which takes away or impairs rights acquired under the existing law must not be construed to have a

*Appeal from Appellate Decree no. 740 of 1936, from a decision of Babu Nirmal Chandra Ghosh, Subordinate Judge of Monghyr, dated the 20th June, 1936, confirming a decision of Babu Jauki Prashad Singh, Munsif of Monghyr, dated the 17th March 1935.

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retrospective force, unless by express words or necessary implications it appears that such was the intention of the legislature which passed it.

An Act of limitation, being a law of procedure, will ordinarily govern all proceedings, to which its terms are applicable, from the moment of its enactment; but this rule must admit of the qualification that when the retrospective application of the statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the legislature, then the statute is not, any more than any other law, to be construed retrospectively.

Khusalbhai v. *Kabhai*(1), followed.

There is no rigid rule that where an Act does not come into force immediately but allows some time for the enforcement of existing causes of action, it must be inferred that the Act was intended to be retrospective.

Where, however, it appeared that the litigants had a reasonable opportunity of enforcing their existing causes of action between the date when the Bihar Tenancy Act, 1885, was published in the Gazette and the date when it came into force, *held*, that the provision embodied in article 2(*b*)(*ii*) of Schedule III of the Act was intended to be retrospective so as to affect existing causes of action.

Queen v. *Leeds and Bradford Railway Company*(2), *Manjhori Bibi* v. *Akel Mahumed*(3), *Gopeshwar Pal* v. *Jiban Chandra Chandra*(4), *Ramkrishna Chetty* v. *Subbaray Aiyer*(5) and *Rajah Sahib Meharban-I-Doston Sri Raja Row V. K. M. Surya Row Bahadur* v. *G. Venkata Subba Row*(6), reviewed.

Appeal by the defendant.

The facts of the case material to this report are set out in the judgment of Fazl Ali, J.

(1) (1881) I. L. R. 6 Bom. 26.
(2) (1852) 21 L. J. (N. S.) M. C. 193.
(3) (1913) 17 Cal. W. N. 889.
(4) (1914) I. L. R. 41 Cal. 1125, S. B.
(5) (1912) I. L. R. 38 Mad. 101.
(6) (1913) I. L. R. 39 Mad. 645, F. B.

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M. K. Mukherjee, for the appellant.

G. N. Mukherjee, for the respondent.

FAZL ALI, J.—This appeal arises out of a suit instituted by the plaintiff-respondent to recover arrears of manhunda rent for the years 1339 to 1342 Fasli. The suit having been decreed by the courts below the defendant has preferred this second appeal.

As the suit was instituted by the plaintiff after the Bihar Tenancy Act came into force, it is contended on behalf of the appellant that the period of limitation which will govern the suit is the period provided by the new Act and so the claim for the years 1339 and 1340 Fasli is time barred under Schedule III, Article 2(*b*)(*ii*), of that Act. On the other hand, it is contended on behalf of the plaintiff that inasmuch as the claim for the rent of the years 1339 and 1340 arose before the passing of the new Act, the suit must be governed by the Bengal Tenancy Act as it stood before the new Act was passed. The parties have cited before us a number of decisions, the most recent decision being that of a Division Bench of this Court in *Shaikh Reyasat* v. *Gopi Nath Missir*(1) which supports the view put forward on behalf of the appellant. This decision has already been followed by this Bench in Second Appeals nos. 978 and 979 of 1936, but as its correctness were challenged both in the present appeal and in Second Appeals nos. 978 and 979 of 1936 and as we have been pressed to refer this case to a larger Bench, I propose to deal with the matter at some length. That the question is not free from difficulty will be evident from what follows.

It is well settled that a statute which takes away or impairs rights acquired under the existing law must not be construed to have a retrospective

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force, unless by express words or necessary implications it appears that such was the intention of the Legislature which passed it. It is true that ordinarily the enactments which regulate procedure take effect immediately on the principle that "no suitor has a vested interest in the procedure" and that an Act of limitation, being a law of procedure, will ordinarily govern all proceedings, to which its terms are applicable, from the moment of its enactment. But, as was pointed out in *Khusalbhai* v. *Kabhai*(1), this rule must admit of the qualification that when the retrospective application of the statute of limitation would destroy vested rights, or inflict such hardship or injustice as could not have been within the contemplation of the Legislature, then the statute is not, any more than any other law, to be construed retrospectively. The propositions enunciated above have not only been affirmed in a series of decisions but they have received statutory recognition in section 6 and section 8, clause (*c*), of the Bihar and Orissa General Clauses Act, 1917, and the new Bihar Tenancy Act must be construed subject to them.

Section 8 of the Bihar and Orissa General Clauses Act provides that

> "where any Bihar and Orissa Act repeals any enactment hereto made, or hereafter to be made, then, *unless a different intention appears, the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed.*"

Now there are no express words in the Bihar Tenancy Act to show that the provision made in Schedule III, Article 2(*b*)(*ii*), of the Act was intended to affect rights which had accrued before the Act came into operation, but there is some authority for the proposition that where the Act does not come into force immediately but allows some time for the enforcement of existing causes of action it may be inferred that the Act was intended

(1) (1881) I. L. R. 6 Bom. 26.

to be retrospective. This view has been very clearly expressed by Lord Campbell in *Queen* v. *Leeds and Bradford Railway Company*(1), while dealing with *11 and 12 Vict. Chapter 43*, in the following passage:—

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"If the Act had come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention, on the part of the Legislature, not to give it a retrospective operation; but when we see that it contains a provision suspending its operation for six weeks, that must be taken as an intimation that the Legislature has provided that as the period of time within which proceedings respecting antecedent damages or injuries might be taken before the proper tribunal.....a certain time was allowed before the Act was to come into operation and that removes the difficulty".

Again in *Manjhoori Bibi* v. *Akel Mahmud*(2) Mookerjee, J. observed as follows:—

"On the other hand where a new statute of limitation reduces the time previously allowed for commencement of the suit, but does not come into operation forthwith and allows a reasonable time for the enforcement of existing causes of action, the Court will not hesitate to hold that the statute may affect causes of action already accrued in the same manner as those accruing after its passage".

The observations made by Mookerjee, J. were approved by a Full Bench of the Calcutta High Court in *Gopeshwar Pal* v. *Jiban Chandra Chandra*(3) as will appear from the following extract from the judgment delivered by Sir Lawrence Jenkins in that case:

"The law as amended may regulate the procedure in suits in which the plaintiff could comply with its

(1) (1852) 21 L. J. (N. S.) M. C. 193.
(2) (1913) 17 Cal. W. N. 889.
(3) (1914) I. L. R. 41 Cal. 1125, S. B.

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provisions, but cannot govern suits where such compliance was from the first impossible. The effect is to regulate not to confiscate. There are thus, two positions; where in accordance with its provisions a suit could be brought after the passing of the amendment, it may be that the amendment would apply, but where it could not, then the amendment would have no application."

I have underlined certain passages in the above quotations to show that neither Mookherjee, J. nor Sir Lawrence Jenkins meant to lay down any rigid rule to the effect that whenever the operation of a statute is postponed, the Court must draw the inference that the statute was intended to affect causes of action already accrued. That there may be cases in which such an inference cannot reasonably be drawn, may be illustrated by the decisions of the Madras High Court in *Ramkrishna Chetty* v. *Subbaray Aiyer*(1) and *Rajah Sahib Meharban-I-Doston Sri Raja Row V. K. M. Surya Row Bahadur* v. *G. Venkata Subba Row*(2). In these cases the question of limitation arose in connection with the Estates Land Act passed by the Madras Legislature in March, 1908. It was stated in that Act that it would come into force *on the 1st of July, 1908*, that is to say, nearly four months after it was passed and the Governor gave his assent to it on the 25th March, 1908 (nearly three months before the Act was to come into force). But the assent of the Governor-General having been given on the 28th June, Wallis, C.J. pointed out in the Full Bench case referred to above that "the result of the passing of the Act, which came into force only two days after it received the Viceroy's assent, was to leave no opportunity for the exercise of the plaintiffs' vested right of suit" and held that the Act did not affect the causes of action which had accrued before it came into force.

(1) (1912) I. L. R. 38 Mad. 101.
(2) (1913) I. L. R 39 Mad. 645, F. B.

Now the points to be noticed with reference to the Bihar Tenancy Act are:—

(1) Unlike *11 and 12 Vict. Chapter 43* which Lord Campbell had to construe and the Estates Land Act of Madras, which was the subject of the two decisions of the Madras High Court cited above, the Act itself did not specify the date on which it was to come into force. All that was stated in the Act was that " it shall come into force on such date as the local Government with the previous sanction of the Governor-General in Council may by notification in the local official gazette appoint in this behalf ".

(2) After the assent of the Governor-General had been obtained the Bihar Tenancy Act was published in the *Bihar and Orissa Gazette* on the 14th November, 1934, but the Government notification which announced that the Act would come into force from the 10th June, 1935, was not published in the *Bihar and Orissa Gazette* until the 12th June, 1935, that is to say, two days after the date which was notified as the date of its commencement.

(3) Even if the present suit and other similar suits had been brought on the 14th November, 1934, when the Act was published for the first time in the Gazette, the claim for 1339 Fasli would have been barred because as regards the claim for that year the limitation ran from 30th Bhado, that is to say, 14th September, 1933.

The points which arise from those facts are obvious and the learned Advocate for the respondent fully emphasised them in his argument. His first contention was that where the Act itself does not state the period for which its operation has been suspended, no inference can be drawn as to the intention of the Legislature in postponing its operation. It was suggested by him that as the Act could not come into force without the sanction of the Governor

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and the Governor-General, the Legislature could not but have left it to the local Government to notify the date of the commencement of the Act and the mere fact that the local Government in the exercise of its discretion thought it fit to postpone the operation of the Act, should not be a ground for holding that the Legislature when it passed the Act intended to take away the rights which had already accrued.

The respondents then ask—what will happen to suits instituted on the 10th and 11th of June, 1935? This point arises because the notification that the Act was to come into force on the 10th of June was not published in the gazette until the 12th of June. Then again, as has been already stated, even if suits for the rent of 1339 Fasli which under the old Act could be brought up to the middle of September, 1936, had been brought on the date on which the Bihar Tenancy Act was published for the first time in the Gazette, the claim for that year would have been barred. Thus in the present case, to use the words of Sir Lawrence Jenkins the effect of the new law was not merely "to regulate but to confiscate". This raises a serious question because even Lord Campbell observed with reference to *11 and 12 Vict. Chapter 43* that

"If the Act did come into operation immediately after the time of its being passed, the hardship would have been so great that we might have inferred an intention on the part of the Legislature not to give it retrospective operation."

I have dealt with these points at some length because I am convinced that there is a good deal to be said in favour of the contention that the statute should not be given retrospective effect. We are, however, not disposed to refer this case to a larger Bench because we are not prepared to disagree with the decision in *Saikh Reyasat's* case(1) in the present state of the

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authorities which have been elaborately dealt with in that case and in the judgments of Carnduff and Mookerjee, JJ. in *Manjhoori Bibi* v. *Akel Mahmud*(1). On the other hand certain facts which came to light in the course of the argument in this appeal lend, in our opinion, considerable support to the view expressed in *Shaikh Reyasat's* case(2). From the dates already given it will appear that there was an interval of nearly seven months between the publication of the Act and the date on which it came into operation. The matter, however, does not rest there. On the 13th February, 1935, that is to say, two months after the Act had been published in the Gazette, the local Government issued a press communique to the following effect:—

"It is notified for general information that the Government of Bihar and Orissa intend to appoint a date not earlier than the 1st of June, 1935, as the date on which the Bihar Tenancy Amendment Act will come into force. The exact date will be notified later."

Then came the notification of the 4th of June which was published in the Gazette of the 12th of June. Thus no vigilant suitor can legitimately complain that he did not get a reasonable opportunity to institute his suit before the Act came into force. The strongest argument against the retrospective operation of the Act is that the claim for the rent of the year 1339 would have, in any case, become time-barred; but if from the circumstances of the case taken as a whole, it can be gathered that the Act was intended to be retrospective, this fact alone will not alter the situation. The fact that the period of limitation provided in the previous Act was shortened by the Legislature shows that it looked with disfavour upon the practice of postponing the institution of suits for produce rent for three years, and that may be the reason why it did not show much consideration to plaintiffs who, though they could have instituted their

(1) (1913) 17 Cal. W. N. 889.
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suit earlier, had postponed its institution till the last day of limitation. It may be stated here that the present suit was instituted in August, 1935, that is to say, nearly two months after the present Act came into force.

FAZL ALI, J.

Thus following the decision of the Division Bench in *Shaikh Reyasat's* case(1), I would allow this appeal in part and dismiss the claim of the plaintiff in regard to the rent for the years 1339 and 1340 and direct that a decree be passed for the rent due from the defendants in 1341 and 1342. The damages must be calculated upon the rent due for these two years but in other respects the decree of the lower appellate court will be upheld. The parties will bear their own costs in this appeal and in the proceedings in both the courts below.

VARMA, J.—I agree.

Ordinarily an Act of limitation is placed in the category of adjective law and under the established rules of interpretation it has retrospective effect: but, as was laid down in *Khusalbhai* v. *Kabhai*(2), this rule must in certain instances be qualified, e.g., when a retrospective effect of the statute of limitation would destroy vested rights by inflicting such hardship or injustice as could not have been in the contemplation of the Legislature. The question in the present case is whether the Bihar Tenancy Act will apply to the present suit, which was filed for realising arrears of manhunda rent for the years 1339 to 1342, Fasli. The suit was filed on the 30th August, 1935. The Act was published in the Gazette of the 14th of November, 1934, after the assent of the Governor-General given on the 21st of October, 1934. A notification, published in the *Bihar and Orissa Gazette* on the 12th of June, 1935, announced that the Act would come into force from the 10th of June, 1935,

(1) (1938) I. L. R. 18 Pat. 1.
(2) (1881) I. L. R. 6 Bom. 26.

that is to say, two days before the publication in the Gazette; and we also find that on the 13th of February, 1935, a press communique was issued by the local Government to the following effect:

"It is notified for general information that the Government of Bihar and Orissa intend to appoint a date not earlier than the 1st of June, 1935, as the date on which the Bihar Tenancy (Amendment) Act will come into force. The exact date will be notified later."

I respectfully agree with the view taken in *Manjhoori Bibi* v. *Akel Mahmud*(1) and *Gopeshwar Pal v. Jiban Chandra Chandra*(2) that where a new statute of limitation reduces the time previously allowed for commencement of the suit, but does not come into operation forthwith and allows a reasonable time for the enforcement of existing causes of action, the Court will not hesitate to hold that the statute may affect causes of action already accrued in the same manner as those accruing after its passage. The whole question is whether on the dates mentioned it can be held that there was reasonable time for the litigant public to enforce their existing causes of action. Taking into consideration the date of the publication of the Act in the Gazette and the communique on the 13th of February, 1935, I am of opinion that the Act will affect causes of action already accrued; and following the decision in *Shaikh Reyasat's* case(3) I hold that in this case also the Bihar Tenancy Act will apply. I agree, however, with my learned brother that there is a good deal to be said for the opposite view and the question is not free from difficulty.

S.A.K. *Appeal allowed in part.*

(1) (1913) 17 Cal. W. N. 889.

(2) (1914) I. L. R. 41 Cal. 1125, S. B.

(3) (1938) I. L. R. 18 Pat. 1.